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June 16, 1993

VIA HAND DELIVERY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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JUN 16 1993

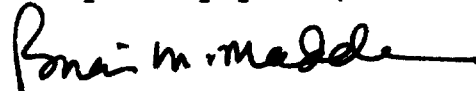
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Searcy:

On behalf of Vector Broadcasting Inc., permittee of Station WYUL(FM), Chateaugay, New York, there are transmitted herewith an original and four copies of the Reply Comments of Vector Broadcasting Inc. in MM Docket No. 93-76.

If any additional information is desired in connection with this matter, please contact the undersigned counsel.

Very truly yours,



Brian M. Madden

Enclosure

BMM/tlm

cc w/encl.:

Mr. Michael C. Ruger
Ms. Leslie K. Shapiro
Gerald Stevens-Kittner, Esq.
Robert M. McDowell, Esq.

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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JUN 16 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b))	MM Docket No. 93-76
Table of Allotments)	RM-8196
FM Broadcast Stations)	
(Chateaugay, New York))	

To: Chief, Allocations Branch

REPLY COMMENTS OF
VECTOR BROADCASTING INC.

Vector Broadcasting Inc. ("Vector"), permittee of Station WYUL(FM), Chateaugay, New York, by its attorneys and pursuant to the provisions of Section 1.415(c) of the Commission's rules, hereby submits its reply to the Comments filed in this proceeding by L.C.C. Media, Inc. ("L.C.C."), licensee of Stations WICY and WNVN(FM), Malone, New York.

L.C.C. has objected to the allotment changes proposed by Vector in this proceeding -- the substitution of Channel 234C2 for Channel 234A at Chateaugay, New York, and the modification of the construction permit for Station WYUL -- not on the basis that the proposal in any way fails to comply fully with all pertinent Commission technical standards, but solely on the ground that the improvement in the facilities of the Chateaugay station could have an adverse effect on L.C.C.'s private economic monopoly on local radio revenues. To this end, L.C.C. has advanced

contentions which are wholly irrelevant to this allotment proceeding and which are premised upon fabricated representations, as will be shown herein. Vector respectfully urges that, following the receipt of Canadian concurrence, the Commission promptly approve the proposed channel substitution at Chateaugay, New York, and that it modify the construction permit of Station WYUL to specify operation on Channel 234C2, at which time Vector will file an application to propose to operate with the facilities specified in the modified construction permit.

**Vector's Proposed Upgrade of Station WYUL is
Fully Consistent with All Applicable
Commission Rules and Regulations**

Lest L.C.C.'s posturing distract the Commission, it is important at the outset to focus on the single subject of this proceeding: the routine, and uncomplicated, channel substitution at Chateaugay and upgrade of Station WYUL. As evidenced by the Notice of Proposed Rule Making in this proceeding, and by the material previously filed by Vector, the proposed improvement in the facilities of Station WYUL complies with all Commission technical rules and policies. L.C.C. addressed these technical considerations only in the briefest fashion -- by but a single passing reference in the summary of its Comments -- in which it concedes that "the upgrade may be technically feasible...." L.C.C. Comments at i. As indicated in the following material, compliance with the technical rules is the only inquiry that is

relevant to consideration of Vector's proposal in this proceeding.

**The Review of Economic Factors and
Integration Plans Urged by L.C.C. Is
~~Irrelevant in an Allegation Proceeding~~**

eliminated issues relating to the potential effects of economic competition from its consideration in any broadcasting licensing or allotment proceeding. Policies Regarding Detrimental Effects of Proposed New Broadcast Station of Existing Stations, 3 FCC Rcd. 638 (Commission, 1988), recon. denied, 4 FCC Rcd. 2276 (Commission, 1989) ("Economic Policies"). In that action, the Commission eliminated the "Carroll" doctrine, by which existing stations had often attempted to preclude the institution of new broadcasting service on the claim of dire losses that would inevitably result from new competition, in manner similar to the dismay expressed by L.C.C.

Observing that among the more than 80 cases in which a Carroll issue had been requested, in not a single instance was a net loss of service to the public established, Economic Policies, supra, 3 FCC Rcd at 639-640, the Commission concluded that this type of inquiry often resulted in mischief that ill-served the public interest:

Where the Commission determines that an authorization of a new station will not result in Carroll inquiry, as it consistently has in the cases on record involving such issues, the public is disserved by the delay in the initiation of the service of the new station. *Such delays also may work to the*

^{1/}(...continued)

are incorrect, but Vector will not comment specifically on these matters given their utter lack of significance to this proceeding. Vector's forbearance should not, however, be considered as connoting acquiescence.

advantage of existing stations in the market, enabling them to delay competition in an attempt to further enhance their own position in the market. Thus, the Carroll doctrine may have the undesired effect of providing existing licensees with an anti-competitive tool to delay the entry of new stations. It is not surprising, then, that existing broadcasters continue to make claims of economic injury against new competitors based on weak showings even though it is well known that the standards for demonstrating such injury are stringent.

Id. at 640 (emphasis supplied and footnotes omitted).

L.C.C.'s conduct here is merely another example of such anti-competitive behavior. It is not surprising that L.C.C. omits from its filing the fact that, without competition from Station WYUL, its AM and FM stations have a virtual monopoly on local radio service. The other radio stations that L.C.C. claims provide service to its market are licensed to communities far removed from Malone: Messena, New York is more than 30 miles from Malone; Plattsburg, New York is more than 40 miles from Malone; and Burlington, Vermont is more than 60 miles from Malone. While it may be evident why L.C.C. would like things to remain as they are, such a transparent protectionist ploy must not be credited by the Commission.^{2/}

^{2/} One can readily imagine that if L.C.C. were seeking to upgrade its own FM station, its proposal would be touted as serving the public interest because of L.C.C.'s "exemplary service" to its local market. Moreover, it is ironic that L.C.C. complains about the devastating effect of new service from Station WYUL on the local Malone market, see L.C.C. Comments at 7, while it castigates Vector for its supposed
(continued...)

L.C.C. strains to include Vector's request for improvement in the facilities of Station WYUL within the ambit of the NAB's petition seeking to curtail generally the proliferation of new station proposals. L.C.C. wants the Commission to circumscribe upgrades of authorized stations, as well. The NAB's pending proposal has been tailored especially so as not to interfere with upgrades of existing facilities. See NAB Petition for Rule Making, filed February 10, 1993, at 16 (Commission should place "greater emphasis" on enhancement of existing facilities). If L.C.C. wants to expound its parochial view of the undesirability of upgrade petitions by authorized but unbuilt stations and to seek adoption of a broad new Commission policy of general applicability proscribing such requests, Vector submits that, as the NAB has, L.C.C. should file a request for a separate rule making proceeding; the adoption of rules of general applicability, as sought by L.C.C., are more appropriately considered in a generic proceeding, not one involving a single station. The Commission has repeatedly held that allegations of adverse economic impact are irrelevant in consideration of individual allotment proposals. See, e.g., FM Table of Allotments (Newberry, Michigan) (MM Docket No. 89-479), 5 FCC Rcd. 5925 (Mass Media Bureau, 1989) (upgrade proposal); FM Table

^{2/}(...continued)
plans to ignore the local area and serve Canadian markets,
id. at 12.

of Allotments (Hardinsburg, Kentucky) (MM Docket No. 89-516), 5
FCC Rcd. 7684 (Mass Media Bureau, 1990) (new FM allotment).
Since Vector's proposal is fully consistent with all applicable
Commission rules and regulations, the upgrade of Station WYUL
should be granted promptly and routinely.

L.C.C.'s Assertions Rest Upon Unsupported
Assumptions and Fabricated Representations

In the foregoing material, Vector has explained why

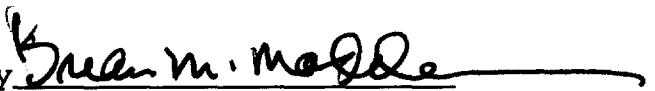
Attached hereto is Mr. Montali's declaration in which he

Conclusion

The proposed changes to the FM Table of Allotments sought by Vector to improve the facilities of Station WYUL are in full accord with all pertinent Commission rules. Vector has previously represented its continuing interest in effectuating the construction of the station with its modified facilities. Accordingly, Vector urges that the Commission substitute Channel 234C2 for Channel 234A at Chateaugay, New York, and modify the construction permit for Station WYUL as proposed.

Respectfully submitted,

VECTOR BROADCASTING INC.

By 
Brian M. Madden

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006

Its Attorneys

June 16, 1993


AFFIDAVIT

Timothy D. Martz, having first been duly sworn, hereby states as follows:

I have read the Comments filed by L.C.C. Media, Inc. ("L.C.C.") in MM Docket No. 93-76, a rule making proceeding initiated at the request of my company, Vector Broadcasting Inc., seeking a co-channel upgrade for Station WYUL(FM), Chateaugay, New York.

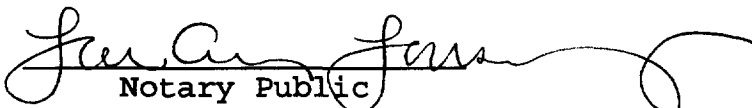
I have also read the supporting Declaration of James M. Coughlin, Jr., the president of L.C.C., who states, with specificity and under penalty of perjury, that he met me in Nashville, Tennessee in March of 1992, and that we discussed my plans in broadcasting.

Mr. Coughlin's statement regarding our having met is a lie, without any basis in fact. I have never been in Nashville, and did not meet with Mr. Coughlin there, or anywhere else, in March of last year. Indeed, to the best of my recollection, I have never met Mr. Coughlin at any time. The comments attributed to me are similarly fictional and do not reflect any business plan that I have formulated or followed.



Timothy D. Martz

Subscribed to and sworn before me this 10th day of June, 1993.


Notary Public

LOU ANN LONSWAY

My commission expires: NOTARY PUBLIC STATE OF OHIO
MY COMMISSION EXPIRES MARCH 24, 1998

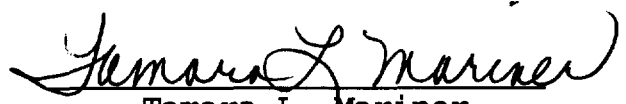
CERTIFICATE OF SERVICE

I, Tamara L. Mariner, do hereby certify that a true and complete copy of the foregoing "Reply Comments of Vector Broadcasting Inc." was mailed June 16, 1993, postage prepaid to the following:

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Federal Communications Commission
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Washington, D.C. 20006
Counsel for L.C.C. Media, Inc.


Tamara L. Mariner

* Via Hand Delivery